

REMARKS

I. Status of Claims:

Claims 1, 3 to 5, 7, 9, 11 and 13 to 14 are in this application and are presented for reconsideration. By this Amendment, Applicants amended claims 1, 3 to 5, 7, 9, 11 and 13 to 14 and cancelled claims 6 and 12 under 37 CFR §1.116(2) to present the rejected claims in a better form for consideration in a potential appeal.

II. Claim Objections:

The Examiner objected to the status identifier for claim 1.

Accordingly, Applicants have clarified the status of claim 1.

III. Claim Rejections -- 35 USC §112:

The Examiner rejected claims 1, 3 to 7, 9 and 11 to 14 under 35 USC §112, first paragraph, for reciting "non-penetrating" before projectile in at least claims 1 and 7.

In response, Applicant has amended claims 1 and 7 to recite "penetration-resistant" as stated in the specification and as referred to by the Examiner.

The Examiner rejected claims 1, 3 to 7, 9 and 11 to 14 under 35 USC §112, second paragraph alleging that the claims are indefinite with respect to defining hardness.

Applicants have amended claims 1 and 7 to include the features of claims 6 and 12 to overcome this indefiniteness rejection.

IV. Claim Rejections -- 35 USC §102:

The Examiner rejected claims 1 and 3 to 6 under 35 USC §102(b) as being anticipated by the FR2639104 to Levoux et al. (the "Levoux '104" reference, hereinafter). This determination is respectfully traversed.

Independent claim 1 of the present invention provides for a less lethal projectile with a generally cylindrical body and a hollow cylindrical bore extending rearwardly.

Contrary to the Examiner's position, the Levoux '104 reference does not disclose the cylindrical body nor the hollow cylindrical bore of independent claim 1. The structure, according to the Levoux '104 reference, shows "a case with a base equipped ... to contain powder and a crimped ball." It is "characterized in that the ball is made out of a matter flexible ... and present at its end a skirt." Translated text, lines 8 to 11. As can be seen in the Figures, the skirt of Levoux has a flared distal end and is clearly not generally cylindrical. Such a configuration is provided so that the skirt expands to take the full force of the blow in lieu of a wad, creating minimal friction in contact with the barrel of the gun. Thus, the body of the Levoux is not generally cylindrical nor is its bore cylindrical.

Thus, independent claim 1, as well as claims 3 to 5 which depend therefrom, are believed to be patentably distinct over the Levoux '104 reference. Reconsideration is respectfully requested.

V. Claim Rejections -35 USC §103:

The Examiner rejected claims 7 and 11 to 14 under 35 USC §103(a) as being unpatentable over the U.S. Pat. No. 4,043,267 to Hayashi (the "Hayashi '267" reference, hereinafter) in view of the Levoux '104 reference.

The Examiner admits that the Hayashi '267 reference fails to disclose the projectile being nonmetallic and having a durometer hardness in the claimed range. The Examiner then relies on the Levoux '104 reference to fill the deficiencies of Hayashi '267. This determination is respectfully traversed.

It would not be obvious to combine the shot gun round of Hayashi '267 with the projectile of Levoux. The metallic bullet of Hayashi '267 includes a cartridge case 25. Levoux '104 as mentioned above employs a projectile.

The Levoux projectile which is made of "supple and elastic material" is specifically shaped to operate in a casing which is designed to accommodate the tapered skirt of the projectile. The skirt of Levoux is contained in the upper end of the casing having a tapered edge. This specific arrangement allows the skirt to expand and operate with the rifling on the gun to produce the desired offset. Hayashi is a conventional shot gun round having a metallic cylinder projectile round in a cylindrical casing. It would not be obvious to substitute the non-metallic, non-cylindrical round of Levoux into the cylindrical casing of Hayashi '267. The two rounds are designed for different purposes and the projectiles are not interchangeable. Thus, the combination of a cylindrical penetrating resistant projectile in a cylindrical hull (casing) is patentably distinct over the cited combination. The independent claim 7 and claims 8-14 are believed to be patentably distinct.

VI. Conclusion:

Having responded in full to the present Office Action, it is respectfully submitted that the application, including claims 1, 3 to 5, 7, 9, 11, and 13 to 14, is in condition for allowance. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees, including additional claim fees, associated with this communication, or credit any overpayment, to Deposit Account No. 20-0776. Such authorization includes authorization to charge fee for extensions of time, if any, under 37 C.F.R. §1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. §1.136.

Should the Examiner determine that issues remain that have not been resolved by this response, the Examiner is requested to contact Applicant's representative at the number listed below.

Respectfully submitted,

/Darren Kang/

Darren Kang
Registration No.: 51,859
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791
(973) 331-1700

Docket No.: 1122-8 RCE II
Application No.: 10/748,943
Reply to 5/29/07 final Office Action
Page 9

APPENDIX A: FR2639104 (Machine Translated)